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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,407	07/07/2006	Tsunco Nakata	070639-0148	2764

22428 7590 02/17/2010  
FOLEY AND LARDNER LLP  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER
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LEE, CHI HO A

ART UNIT	PAPER NUMBER
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2472

MAIL DATE	DELIVERY MODE
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02/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,407	<b>Applicant(s)</b> NAKATA, TSUNEO	
	<b>Examiner</b> Andrew Lee	<b>Art Unit</b> 2472	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12, 14-18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 4, 13 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/11/09, 7/7/06, 7/8/09</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 7, 9, 10, 16, 22, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Curtis U.S. Patent Number 5,247,464.

Re claims 1, 9, 10, 16, 24, fig 4 (reception node) teaches MS/TRCV 30 (a receiving means) for receiving transmitted packet wherein the packet includes source address 56 (affixing probe information for uniquely identifying...said group packet); memory 54 (a recording means) for recording the arrival time of the received packet; processor 34 (a determining means; a calculating means) for determining the source address of the receive packet and calculating the speed of the packet based on the difference between the arrival times of the packets (See col. 2, lines 5-42 & col. 6, lines 30 +).

Re claims 7, 22, refer to claim 1, wherein the transmitting node includes a packet assembler (not shown: a grouping means) for assembling packets with a source address (affixing probe information).

***Claim Rejections - 35 USC § 103***

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 2, 3, 8, 11, 12, 17, 18, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis U.S. Patent Number 5,247,464 in view of Heiner et al PG-PUB 2004/0203827.

Re claims 2, 3, 8, 11, 12, 17, 18, 23, Curtis fails to teach selecting a path based on the communication load. However, Heiner et al teaches selecting the path based on the determined weight (communication load). One skilled in the art would have been motivated to select a path based on the weight of the path for reliability. Therefore, it would have been obvious to one ordinary skilled to have combined the teachings.

3. Claim 5, 6, 14, 15, 20, 21, 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis U.S. Patent Number 5,247,464 in view of PG-PUB 2003/0154301.

Re claims 5, 6, 14, 15, 20, 21, 25, Curtis fails to teach "generating one dummy packet ...within a predetermined time.". However, '301 teaches after predetermined period of time, an idle packet (dummy packet) is generated for synchronization [0069]. One skilled in the art would have been motivated to generated idle packets for synchronizing for lost packets. Therefore, it would have been obvious to one ordinary skilled to have combined the teachings.

***Allowable Subject Matter***

4. Claims 4, 13, 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

In combination with claims 1 and 4; 10 and 13; 16 and 19, prior art fails to teach the claimed calculating means for computing the communication speed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Lee whose telephone number is 571-272-3130. The examiner can normally be reached on Monday to Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Lee/  
Primary Examiner, Art Unit 2472